

REMARKS

A Request for Continued Examination (RCE) under 37 C.F.R. §1.114 and a Petition for an Extension of Time under 37 C.F.R. §1.136(a) are being filed concurrently herewith.

In the Office Action, claims 7-21 were rejected. More specifically,

- Claims 7 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of U.S. Patent 3,269,079 (Schmied), U.S. Patent 5,682,758 (Jones) and U.S. Patent 6,364,090 (Wild);
- Claims 8 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Schmied, Jones, Wild and U.S. Patent 4,563,862 (McElvy);
- Claims 9-10 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Schmied, Jones and U.S. Patent 6,131,368 (Tramposch); and
- Claims 14-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Schmied, Jones and Tramposch.

By this Amendment, Applicants have herein amended claims 7 and 14, canceled claims 8, 10, 12, 16, 18 and 20, and added new claims 22-24. Applicants submit that support for the amended claims may be found throughout the Specification as filed, and that no new matter has been introduced. Upon entry of this Response, claims 7, 9, 11, 13-15, 17, 19 and 21-24 are pending. For the reasons set forth hereinbelow, Applicants traverse the rejections and respectfully request that the rejections of the claims be withdrawn.

Claims 7, 9, 11, 13 and 22-23

Applicants have herein amended independent claim 7.

In accordance with the analysis stated in *Graham v. John Deere Co.*, a determination of obviousness under §103 requires (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. The question of obviousness must be resolved on the basis of these factual inquiries and any secondary considerations. *See* MPEP § 2141.

Applicants submit that the differences between the cited references (Schmied, Jones, and Wild) and the claimed invention are **substantial**, and that when the invention recited in claim 7 is considered as a whole, the invention recited in claim 7 is nonobvious in view of Schmied, Jones and Wild. *See* MPEP § 2141.02 (stating that in determining the differences between the prior art and the claims, the question under 35 U.S.C. §103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious).

The fact that Schmied, Jones and Wild each fail to disclose, teach or suggest a packaging apparatus which includes, among other things, “a pinching device having a bulged upper portion and a recessed lower portion for pressing an upper part of the storage bag where the granular object is not contained and a lower part of the storage bag where the granular object is settled, before the storage bag is sealed, so as to keep inner surfaces of the upper part without the granular object settled at the bottom of the storage bag into close contact with each other and to keep the granular object from moving when the storage bag sealed by the sealing device is cooled by the cooling device” as recited in claim 7, supports a finding that claim 7 is nonobvious in view of Schmied, Jones and Wild.

In the Office Action, at page 3, section 3, the Examiner concedes that Schmied fails to disclose a pinch mechanism, and by extension concedes that Schmied fails to disclose, teach or suggest a pinching device as recited in claim 7.

Applicants submit that the combination of Jones and Wild fails to remedy the defects of Schmied with respect to claim 7. Jones is merely cited as teaching that it is old and well known in the art to provide a cooling device which cools a product while being supported on a conveyor against gravity, and Wild is merely cited as teaching that it is old and well known in the art to provide a supporting surface comprised of freestanding plates which support bags having a sealed area for the purpose of transporting a package in an upright position prior to packaging. Even if taken as true, the combination of Schmied, Jones and Wild still fails to disclose, teach or suggest the pinching device recited in claim 7.

Therefore, Applicants submit that claim 7 is nonobvious in view of the combination of Schmied, Jones and Wild. Applicants further submit that claims 9, 11, 13 and 22-23, which depend from claim 7, are also nonobvious in view of Schmied, Jones and Wild.. *See* MPEP §2143.03 (stating that if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious). Accordingly, Applicants respectfully request that the §103(a) rejections associated with claims 7, 9, 11 and 13 be withdrawn.

Additionally, Applicants submit that McElvy fails to remedy the defects of the combination of Schmied, Jones and Wild with respect to claim 7, and therefore submit that claim 7 is also nonobvious in view of the combination of Schmied, Jones, Wild and McElvy. McElvy is cited as teaching that it is old and well known in the art of packaging to provide a pinching mechanism comprised of members 40 which engage a package “P” prior to sealing for the purpose of removing the air from the package. Applicants respectfully disagree with the assertion that McElvy teaches removing air from the package. However, even if taken as true,

Applicants submit that McElvy still fails to disclose the pinching device recited in claim 7 (i.e., a pinching device having **a bulged upper portion and a recessed lower portion** for pressing an upper part of the storage bag where the granular object is not contained and a lower part of the storage bag where the granular object is settled, before the storage bag is sealed, so as to keep inner surfaces of the upper part without the granular object settled at the bottom of the storage bag into close contact with each other **and to keep the granular object from moving** when the storage bag sealed by the sealing device is cooled by the cooling device).

Claims 14 and 24

Applicants have herein amended independent claim 14.

Applicants submit that the differences between the cited references (Schmied, Jones, and Tramposch) and the claimed invention are **substantial**, and that when the invention recited in claim 14 is considered as a whole, the invention recited in claim 14 is nonobvious in view of Schmied, Jones and Tramposch. *See* MPEP § 2141.02 *id.*

The fact that Schmied, Jones and Tramposch each fail to disclose, teach or suggest a method, which includes, among other things, “pressing an upper part of the storage bag where the granular object is not contained and a lower part of the storage bag where the granular object is settled, before the storage bag is sealed, so as to keep inner surfaces of the upper part without the granular object settled at the bottom of the storage bag into close contact with each other and to keep the granular object from moving when the sealed storage bag is cooled” as recited in claim 14, supports a finding that claim 14 is nonobvious in view of Schmied, Jones and Tramposch.

In the Office Action, at page 4, section 5, the Examiner concedes that neither Schmied nor Jones discloses the use of a granular object having adsorption properties, and Applicants

submit that neither Schmied nor Jones disclose, teach or suggest the “pressing” step recited in claim 14. Applicants further submit that Tramposch fails to remedy the defects of Schmied and Jones with respect to claim 14. Tramposch is merely cited as teaching that it is old and well known in the art to provide a method of heating a granular object having adsorption properties, placing the granules in a storage bag, sealing the bag and cooling the bag to form a packaged product for the purpose of packaging a product susceptible to outside contamination. Even if taken as true, the combination of Schmied, Jones and Tramposch still fails to disclose, teach or suggest the “pressing” step as recited in claim 14.

Therefore, Applicants submit that claim 14 is nonobvious in view of the combination of Schmied, Jones and Tramposch. Applicants further submit that claim 24, which depends from claim 14, is also nonobvious in view of Schmied, Jones and Tramposch.. *See* MPEP §2143.03 *id.* Accordingly, Applicants respectfully request that the §103(a) rejection associated with claim 14 be withdrawn.

Claims 15, 17, 19 and 21

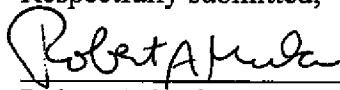
Each of independent claims 15, 17, 19 and 21 incorporate the limitations of claim 7. Therefore, for reasons analogous to those set forth hereinabove with respect to claim 7, Applicants respectfully submit that independent claims 15, 17, 19 and 21 are nonobvious in view of the combination of Schmied, Jones and Tramposch. Accordingly, Applicants respectfully request that the §103(a) rejections associated with claims 15, 17, 19 and 21 be withdrawn.

CONCLUSION

Applicants respectfully request a Notice of Allowance for the pending claims in this application. If the Examiner believes that personal communication will expedite the prosecution of this application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Date: February 12, 2010

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert A. Muha", is written over a horizontal line.

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